Yen Chee Wei v Public Prosecutor

HIGH COURT (SHAH ALAM) — CRIMINAL APPEAL NO 41–278 OF 2005
KN SEGARA J
10 APRIL 2006

Criminal Law — Road Transport Act 1987 — s 41(1) — Causing death by reckless or dangerous driving — Whether prosecution evidence and sketch plan negated defence of the accused — Whether accused should also be disqualified from holding a driving license

The appellant driving Satria No BFB 638 was involved in a collision with Kancil No WGY 194 resulting in the deaths of the driver and three passengers in the Kancil. The appellant was charged in the magistrate's court with an offence under s 41(1) of the Road Transport Act 1987. SP4 for the prosecution had testified that at the material time, he observed the Satria negotiating a bend at high speed, getting out of control and crashing into the Kancil traveling in the opposite direction. A surviving rear passenger in the Kancil testified that she had seen a bright light in front and had seen a motorcar encroach head-on onto the path of the Kancil resulting in the collision. The sketch plan clearly showed that the collision took place just after the bend and on the rightful path of Kancil WGY 194. The vehicles were marked in the sketch plan as resting on the left shoulder of the road. The appellant's defence was simply that the headlights of the Kancil had blinded him, resulting in the collision. At the end of the trial, the magistrate convicted the appellant and sentenced him to two years' imprisonment and to a fine of RM5,000 in default five months' imprisonment. His license was also endorsed. He appealed against conviction and sentence.

Held, dismissing the appeal:

(1) The oral evidence of the witnesses for the prosecution, together with the silent evidence of the sketch-plan, clearly negated any inference of the accident having taken place on the correct side of the appellant's road. In the circumstances, the defence of being blinded or dazzled by the deceased's car (the Kancil) was no defence to the charge, upon a consideration of the totality of the evidence, at the end of the trial (see para 11).

(2) There was no evidence at all that at any time, immediately before the accident, the driver of motorcar WGY 194 was overtaking any vehicle, and therefore, had moved away from his path of travel and encroached on to the path of the appellant, causing the appellant to be dazzled. In the circumstances, the appellant could only have been dazzled whilst on the correct path of travel of motorcar Kancil WGY 194. The irresistible inference, is that the appellant was driving on the wrong side of the road, on a fairly wide highway (see para 12).

(3) The accused had created a dangerous situation and his reckless driving had resulted in four unnecessary deaths, injury and suffering. The conviction had to be upheld and the appeal against conviction, dismissed (see para 12).

(4) The sentence passed by the magistrate was in no way excessive. The fact that the accused suffered injuries was no reason to consider a non-custodial sentence, as the law had been amended, in the public interest, to make it mandatory to impose the minimum term of imprisonment and fine for the offence. The accused should also be disqualified from holding or obtaining a driving licence for a period of three years from the date of conviction under s 41(3) of the Road Transport Act 1987 (see paras 13–14).

[Bahasa Malaysia summary

Perayu yang memandu Satria No BFB 638 terlibat dalam satu perlanggaran dengan sebuah Kancil No WGY 194 mengakibatkan kematian pemandu dan tiga penumpang dalam Kancil tersebut. Perayu telah dituduh di mahkamah majistret kerana satu kesalahan di bawah s 4(1) Akta Jalan Raya 1987. SP4 bagi pihak pendakwa telah memberi keterangan bahawa pada masa matan, beliau memerhatikan Satria itu membelok pada kelajuan tinggi, hilang kawalan dan merempuh Kancil yang memandu di arah bertentangan. Penumpang bahagian belakang yang terselamat dalam Kancil itu memberi keterangan bahawa beliau nampak cahaya terang di hadapan dan melihat sebuah kereta masuk depan sama depan atas jalan Kancil yang mengakibatkan perlanggaran itu. Pelan lakaran jelas menunjukkan bahawa perlanggaran itu terjadi sejurus selepas belokan itu dan atas jalan betul Kancil WGY 194. Kenderaan-kenderaan tersebut telah ditandakan dalam pelan lakaran sebagai berada di bahagian kiri jalan. Pembelaan perayu adalah bahawa lampu besar Kancil telah menyilaukan pandangannya, mengakibatkan perlanggaran itu. Di akhir perbicaraan, majistret telah menyabitkan perayu dan menjatuhkan hukuman ke atasnya dua tahun penjara dan denda RM5,000 dan sekiranya gagal membayar penjara lima bulan. Lesennya juga telah diindorskan. Beliau merayu terhadap sabitan dan hukuman.

Diputuskan, menolak rayuan tersebut:

(1) Keterangan lisan saksi bagi pihak pendakwa, bersama dengan keterangan pelan lakaran, jelas menyangkal apa-apa inferens yang kemalangan itu telah berlaku di bahagian betul jalan perayu. Dalam keadaan demikian, pembelaan yang beliau silau akibat kereta si mati (Kancil) bukan satu pembelaan terhadap pertuduhan, setelah pertimbangan dilakukan berdasarkan keseluruhan keterangan, di akhir perbicaraan (lihat perenggan 11).

(2) Tiada keterangan langsung bahawa pada bila-bila masa, sejurus sebelum kemalangan itu, pemandu kereta WGY 194 telah memotong mana-mana kenderaan, dan oleh itu, telah memandu keluar jalannya dan memasuki jalan perayu, mengakibatkan perayu silau pandangannya. Dalam keadaan sedemikian, perayu hanya silau pandangannya semasa masuk ke jalan kereta

Kancil WGY 194. Inferens yang tidak dapat dibendung, adalah bahawa perayu telah memandu di sebelah jalan yang salah, atas jalanraya besar (lihat perenggan 12).

(3) Tertuduh telah memulakan satu situasi yang berbahaya dan cara memandunya yang semberono telah mengakibatkan kematian, kecederaan dan kesengsaraan. Sabitan tersebut telah dikekalkan dan rayuan terhadap sabitan ditolak (lihat perenggan 12).

(4) Hukuman yang diberikan oleh majistret tidaklah melampau. Hakikat bahawa tertuduh mengalami kecederaan bukan sebab untuk menimbangkan satu hukuman bukan tahanan, kerana undang-undang telahpun dipinda, demi kepentingan awam, untuk menjadikannya mandatori untuk mengenakan tempoh minimum hukuman penjara dan denda bagi kesalahan sedemikian. Tertuduh juga patut tidak layak memegang lesen memandu untuk tempoh tiga tahun daripada tarikh sabitan di bawah s 41(3) Akta Jalan Raya 1987 (lihat perenggan 13–14).]

Notes

For a case on s 41(1) of the Road Traffic Act 1987, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) para 2827.

Legislation referred to

Road Transport Act 1987 s 41(1), (3)

Abdul Rashid bin Abdul Rahman (Hanif & Co) for the appellant.

Wan Shaharuddin bin Wan Ladin (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

KN Segara J:

[1] This is an appeal from the decision of the Magistrate, Mahkamah Majistret Telok Datok, by the appellant herein, Yen Chee Wei, charged for an offence under s 41(1) of the Road Transport Act 1987. He was convicted and sentenced to two years imprisonment, fined RM5,000 in default five months imprisonment and his licence endorsed. The appeal is against both conviction and sentence.

[2] The appellant (hereinafter referred to as the accused) was charged as follows:

> Bahawa kamu pada 10 Jun 2001 jam lebihkurang 10.45 malam di KM 58 Jalan Klang/Port Dickson didalam Daerah Kuala Langat, didalam Negeri Selangor sebagai pemandu motokar No BFB 638 telah memandu kenderaan itu dengan cara melulu sehingga menyebabkan kematian kepada penama Mohd Zaidi bin Sharif KPT: 691101-08-6305, Mohd Shahrul bin Shaharudin KPT: 730416-10-5477, Muhammad Suffian bin Mohd Zaidi S/B. K: 060724, Mohd Zanur Syafiq bin Mohd Zaidi S/B No AD: 37550. Oleh yang demikian kamu telah melakukan satu kesalahan dibawah s 41(1) Akta Pengangkutan Jalan 1987 (Pindaan 1999) (Akta 333/87) dan boleh dihukum dibawah seksyen yang sama.
>
> (Emphasis added.)

[3] The only issue before me was whether the accused had driven the motorcar BFB 638 *recklessly,* thereby colliding with motorcar WGY 194, resulting in the deaths of the driver and three passengers in the said car WGY 194. The learned counsel for the accused submitted the magistrate had not focussed her mind on the issue of 'silau'. There is no dispute that motorcar, Proton Satria BFB 638, driven by the accused, and motorcar Perodua Kancil No WGY 194, driven by the deceased, were travelling in the opposite directions along KM 58 Jalan Klang-Port Dickson, Kuala Langat on 10 June 2001, at about 10.45pm. Motorcar BFB 638 was travelling from the direction of Banting to Tanjong Sepat, whereas the motorcar WGY 194, driven by the deceased, Mohd Zaidi bin Sharif, was travelling from the direction of Tanjong Sepat to Banting (see sketch plan exh P7). There is no dispute that the road is a fairly wide road — 8.6 meters (see P7K). However, the correct path of travel of WGY 194 is slightly narrower than the correct path of travel of motorcar BFB 638.

[4] The sketch plan shows 'C' as the white line dividing the road into two paths of travel for vehicles along the 58km stretch. There is a fairly sharp right hand bend, after a straight stretch, for vehicles travelling north along the road, and the same bend, would be a left hand sharp bend for vehicles travelling south, along the said road. The distance between 'B' (the left edge of the road) and 'D' (right edge of the road) as one travels from the direction of 'Y', that is, Tanjong Sepat to Banting, is 8.1 meters. (B-C is 3.5 meters and C-D is 5.1 meters). In other words the accused, driving motorcar BFB 638, had a wider berth of travel at all material times, compared to motorcar WGY 194, coming from the opposite direction. Looking at the sketch plan P7, the positions of motorcar BFB 638 and motorcar WGY 194, together with the broken pieces of glass after the accident, there is no dispute that the impact between the two cars took place immediately after the left hand bend negotiated by the accused, and along the straight stretch of road, on the correct path of travel of WGY 194. The position of the cars resting on the left shoulder of the road, with motorcar BFB 638 facing its opposite direction of travel, is indicative of a hard impact, and a speed of travel that cannot be described as 'slow', by any standards! Motorcar BFB 638 had obviously gone into a spin before coming to rest in the position it was found by the investigating officer, SP6, who arrived at the scene, about 30 to 40 minutes after the accident.

[5] SP4, Rudin bin Mohamad testified,

> Pada selekoh saya lihat kenderaan itu tak dapat dikawal. Kenderaan yang tak boleh dikawal ialah Satria. Saya dengar dentuman. Saya terperanjat. Saya lihat kemalangan berlaku. Ada bunyi letupan dan lihat Satria itu terbakar…. Saya lihat Satria itu laju dan kawasan itu memang selekoh. Satria itu memang laju. Satu daripada Banting dan satu daripada Tg Sepat. Sebelum kemalangan berlaku, saya betul-betul nampak kejadian. Kenderaan daripada Tg Sepat ke Banting tidak potong sesuatu. Kenderaan daripada Banting ke Tg Sepat juga tidak ada kenderaan di depannya atau cuba potong sesuatu. Cuaca baik hari itu. Tempat kejadian ada lampu jalan. Dari tempat saya berada jelas nampak kejadian berlaku seperti yang saya cakap tadi.
>
> Kenderaan daripada Banting, ia telah terkeluar daripada laluan dia dan saya dengar bunyi dentuman seperti bertembung. Satria itu *berpusing-pusing* lalu menghentam sesuatu.
>
> Satria daripada Banting dan Kancil daripada Tg Sepat. Selepas selekoh, Satria masuk ke lorong lagi satu dan telah bertembung tapi tak pasti samada Satria bertembung.

A Saya nampak kereta itu terbakar dan meletup. Daripada pandangan tempat kerja dan sebelum kemalangan, Satria itu amat laju sebab saya ada di depan jalan tak sampai 10 meter. Kereta itu lebihkurang berapa laju saya tak pasti. Saya tak pandai tafsir.

(Emphasis added.)

B **[6]** SP.3, Shaliza bt Saharudin, the wife of the deceased driver of motorcar Kancil WGY 194 testified,

… saya dalam kereta, di belakang dengan anak perempuan saya, anak lelaki sulung di depan dengan adik saya, anak lelaki nombor dua di bahagian tengah, suami saya drive kereta… Saya leka dengan anak-anak saya dalam kereta,…, *tiba-tiba saya nampak cahaya daripada depan.* Saya terus tak sedar. Saya sedar saya telah ada di hospital. *Kejadian terlalu pantas. Kenderaan datang daripada arah bertentangan, dia masuk jalan kami, terlalu pantas dan berdepan* dengan kereta saya. Saya cuma nampak cahaya dan tak sedar. Sedar ada di hospital…

C

…

D

Cuaca baik dan jalan tak sibuk ketika itu…….. Kereta itu datang dari arah Banting. Kereta *yang datang dari arah depan itu, saya cuma nampak cahaya dan tak nampak kereta* itu mengelak…. *Suami saya ketika itu tak cuba untuk elak atau memotong sesuatu sebelum kemalangan. Ada lampu jalan di situ.* Dekat dengan kawasan Pertubuhan Peladang. Tempat kejadian tak begitu gelap. Pertubuhan Peladang di tepi jalan sahaja.

E (Emphasis added.)

[7] The accused gave evidence on oath. His defence was simple. The headlights of the deceased's car *blinded* him ('tiba-tiba saya nampak satu cahaya terang dan saya silau'), thus the collision. Was the magistrate, therefore, wrong in finding him guilty F of reckless driving?

[8] The accused testified,

… Saya pandu secara biasa dan berhati-hati…. Saya berada di laluan yang betul. Seterusnya masa itu saya sampai di satu selekoh DI Kg Batu Laut, tiba-tiba nampak satu cahaya terang G dan saya silau. Saya tak nampak apa-apa, jalanraya itu gelap dan lampu tak terang. *Tak nampak apa-apa sebab cahaya itu terang sangat.* Pada masa itu saya sedar. Bila nampak lampu terang dan *silau*, saya lepas itu tak tahu apa-apa yang terjadi. Saya sedar bila saya masuk wad di hospital. Kakak saya beritahu tentang kejadian ini. Kakak telah beritahu saya tentang kemalangan itu bahawa kereta saya telah berlanggar dengan Kancil dan 4 mangsa H telah meninggal dunia dan kereta saya telah terbakar."

(Emphasis added.)

[9] When cross-examined, the accused testified he was not familiar with the bend and admitted it was a dangerous bend. He denied he was blinded by the lights of the I on-coming car because he had encroached on to its correct path. He denied he was not travelling on his correct side of the road. He disagreed that this accident would not have occurred if he had concentrated and paid attention to his correct side of the road.

[10] Under cross-examination, he testified: **A**

Q: Biasa dengan selekoh ini.

A: Tidak.

Q: Setuju selekoh ini bahaya.

A: Ya. **B**

Q: Setuju jika ada silau adalah kerana anda memasuki laluan kereta Kancil.

A: Tidak.

Q: Bila anda silau, adakah dilorong kereta anda sendiri. **C**

A: Ya.

Q: Sebelum tiba di selekoh, ada kereta lain datang dari arah bertentangan.

A: Tidak.

Q: Sebaik sebelum tiba di selekoh, apa yang anda tumpukan. **D**

A: Jalanraya itu, ie *beri tumpuan kepada lorong saya.*

Q: Setuju jika anda beri perhatian sepenuhnya kepada lorong anda kemalangan tentu tak akan berlaku.

A: Tak setuju. **E**

(Emphasis added.)

[11] If the accused can be believed in respect of the above answers to the questions in cross-examination, then the accused must, most certainly, be acquitted, as he would have been dazzled and blinded by the lights of the deceased car because the deceased would have been travelling completely on his wrong side of the road, leading to a head-on collision with the accused, who was travelling, at all times, on his correct side of the road!! However, the oral evidence of the witnesses for the prosecution, especially SP3 and SP4, together with the silent evidence of the sketch-plan P7, clearly negates any inference of the accident having taken place on the correct side of the accused's road! In the circumstances, the defence of being blinded or dazzled by the deceased's car is no defence to the charge, upon a consideration of the totality of the evidence, at the end of the trial. **F** **G**

[12] The learned magistrate was correct in finding the accused guilty of reckless driving, as charged. There was no evidence at all that at any time, immediately before the accident, the driver of motorcar WGY 194 was overtaking any vehicle, and therefore, had moved away from his path of travel and encroached on to the path of the accused, causing the accused to be dazzled. In the circumstances, *the accused could only have been dazzled in the correct path of travel of motorcar Kancil WGY 194.* The irresistible inference, in the circumstances, is that the accused was driving on the wrong side of the road, on a fairly wide highway. He has showed complete disregard for the safety of other traffic travelling from the opposite direction at a dangerous bend. It would be almost impossible for the driver of any vehicle coming from the opposite direction of the accused, placed in such a situation, to take any evasive **H** **I**

action to avoid an accident. (The accused would have completed the bend and entered the straight stretch, *travelling on his wrong side of the road, directly in the path of the on-coming vehicle)*. Certainly, in such circumstances, the accused would be dazzled by the lights of the on-coming car!! The accused created a dangerous situation and his reckless driving has resulted in four unnecessary deaths, injury and suffering. Therefore, the accused's defence of dazzlement, is no answer to the charge against him. The conviction must be upheld and the appeal against conviction, dismissed.

[13] The sentence passed by the magistrate is in no way excessive. The magistrate has in fact erred on the side of leniency, taking into consideration that 4 innocent lives were lost by the reckless driving of the accused!! The fact that the accused suffered injuries is no reason to consider a non-custodial sentence, as the law has been amended, in the public interest, to make it mandatory to impose the minimum term of imprisonment and fine for the offence. However, the magistrate has failed to impose the mandatory disqualification from holding or obtaining a driving licence for three years from the date of conviction under s 41(3) of the said Road Transport Act, as amended.

[14] In the circumstances, the appeal against sentence is also dismissed. The sentence is affirmed. It is further ordered that the accused shall be disqualified from holding or obtaining a driving licence for a period of three years from the date of conviction under s 41(3) of the Road Transport Act 1987. The accused is to serve his sentence of imprisonment forthwith. There shall be no further stay of execution.

[15] Appeal dismissed. Conviction and sentence confirmed. Disqualified from holding or obtaining a driving licence for a period of three years from date of conviction.

Appeal dismissed.

Reported by John Paul Simon